

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

W.A.No.1439 of 2007

AGAINST THE JUDGEMENT IN W.P.(C).NO.7433/2007 DATED 12/03/2007

APPELLANT: PETITIONER:-

M/S. N.M. MINERALS INDIA PVT. LTD.,
MADAKKATHARA P.O. (OPP: K.S.E.B.SUB STATION),
MANNUTHY, THRISSUR,
REPRESENTED BY ITS MANAGING DIRECTOR, B.K. NAIR.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON
SMT.MEERA V.MENON

RESPONDENTS/RESPONDENTS:-

1. COMMERCIAL TAX OFFICER, FIRST CIRCLE, THRISSUR.
2. DEPUTY COMMISSIONER (APPEALS),
DEPT. OF COMMERCIAL TAXES, ERNAKULAM.
3. DEPUTY COMMISSIONER OF COMMERCIAL TAXES, THRISSUR.
4. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
5. DEPUTY TAHSILDAR (RR),
TALUK OFFICE, THRISSUR.

BY SPECIAL GOVERNMENT PLEADER (TAXES) SRI.V.V.ASHOKAN.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:-

H.L.Dattu,C.J. & K.T.Sankaran,J.

W.A.No.1439 of 2007

Dated, this the 20th day of June, 2007

JUDGMENT

H.L.Dattu,C.J.

Sri.V.V.Ashokan, learned Government Pleader (Taxes) is directed to take notice for the respondents and he is permitted to file his memo of appearance in four weeks' time from today.

2. This appeal is filed by an assessee being aggrieved by the orders passed by the learned Single Judge in W.P.(C).No.7433 of 2007 dated 12.03.2007. By the impugned order, the learned Single Judge has rejected the prayer sought for by the petitioner in the writ petition.

3. Brief facts are: Petitioner is a small scale industrial unit. It is engaged in the production and sale of packaged drinking water and soda. It is also registered under the provisions of the Kerala General Sales Tax Act ("KGST Act" for short) and Central Sales Tax Act ("CST Act" for short).

4. Appellant was assessed to tax for the assessment years 1999-2000, 2000-2001 and 2001-2002. After such assessments, it appears, the assessing authority had initiated revenue recovery proceedings and has recovered a sum of Rs.5,64,814/- as tax payable for the aforesaid assessment years.

5. For the subsequent years, demand notices have been issued by the assessing authority (Exhibits P4 and P5). After receipt of those notices, the appellant had requested the respondent, assessing authority, to adjust the tax paid by him for the assessment years 1999-2000, 2000-2001 and

2001-2002. Since that has not been done, the appellant/petitioner was before this Court *inter-alia* requesting this Court to issue a writ in the nature of certiorari to quash Exhibits P4 and P5.

6. There was yet another prayer in the writ petition requesting this Court to declare a portion of Exhibit P1 notification as arbitrary and illegal and lastly to direct the respondents to adjust the tax paid for the assessment years 1999-2000, 2000-2001 and 2001-2002 towards the tax dues for the assessment year 2002-2003.

7. The learned Single Judge keeping in view the language employed in the notification issued by the State Government dated 17.7.2004 has rejected the writ petition. It is the correctness or otherwise of the order passed by the learned Single Judge is the subject matter of this Writ Appeal.

8. Sri.Harisankar V.Menon, learned counsel appearing for the appellant would submit before us that the intention of the State Government while issuing the notification was to exempt the small scale industrial units engaged in the production and sale of packed water and soda from payment of sales tax and in such notification the State Government could not have stated that if any amount has been collected and paid over to State Government and if any tax has already been paid, the same shall not be refunded. They are only arbitrary and illegal.

9. In order to appreciate the contention canvassed by the learned counsel appearing for the appellant, it would be useful to refer to the notification issued by the State Government dated 17th July, 2004. The same is as under:

“GOVERNMENT OF KERALA

Taxes (B) Department

NOTIFICATION

G.O.(P).No.116/2004/TD Dated, Thiruvananthapuram 17th July, 2004

S.R.O.No.731/2004.- In exercise of the powers conferred by section 10 of the Kerala General Sales Tax Act, 1963 (15 of 1963), the Government of Kerala having considered it necessary, in the public interest to do so, hereby make an exemption in respect of the tax payable under the said Act, on the sale of mineral water or packaged drinking water by small scale industrial units for the period from 1st January, 1994 to 9th April, 2002.

Tax if any, collected shall be paid over to Government and tax, if any already paid shall not be refunded”.

10. The State Government, in exercise of its powers under Section 10 of the Act and in public interest, has granted exemption in respect of tax payable under the Act on the sale of mineral water or packaged drinking water, manufactured and sold by small scale industrial units for the period from 1st January, 1994 to 9th April, 2002.

11. Significantly, in the said notification it is made clear that if for any reason a small scale industrial unit had collected the taxes and had paid over to the State Government, such tax shall not be refunded. This is all that can be inferred from the aforesaid notification.

12. The language employed in the notification is clear in the sense that there is no ambiguity as such. If there is any ambiguity in understanding the purport of the notification, then only the benefit of that notification requires to be given to an assessee. Yet again, the Courts have repeatedly observed that the exemption notification requires to be strictly

construed by the Courts.

13. Keeping the aforesaid aspects of the matter in view, let us once again consider the facts of the case. It is the admitted fact that the appellant is a small scale industrial unit. It is engaged in the production and sale of packaged drinking water and soda. For the assessment years 1999-2000, 2000-2001 and 2001-2002, the assessing authority, after completing the assessments, has collected a sum of Rs.5,64,814/- as tax due under the Act.

14. The exemption notification was notified by the State Government in exercise of its powers under Section 10 only on 17.7.2004. This has been given retrospective effect with effect from 1.1.1994 to 9.4.2002. Even before the notification could be issued, the assessing authority had already collected the tax dues under the Act from the assessee.

15. The primary contention raised by the learned counsel appearing for the appellant is that the tax paid by the assessee either should be adjusted towards the tax liability for the subsequent year or at least should be refunded to the assessee/appellant unit. Both cannot be granted for the sole and simple reason that the notification itself makes it clear that if for any reason the tax has been collected and paid to the State Government, the same shall not be refunded. But, if the tax had not been collected and had not been paid over to the State Government, then the first part of the notification would definitely apply to an assessee.

16. Therefore, the request of the appellant for refund of the tax paid for the assessment years 1999-2000, 2000-2001 and 2001-2002 cannot be granted. Accordingly, the prayer in this regard requires to be rejected.

17. But in so far as the adjustment is concerned, the Act contemplates two concepts, one is payment of tax and the other is refund. The Act nowhere contemplates adjustment of tax. If for any reason the assessee is entitled for refund of the tax, he has to make an appropriate claim and he cannot be requesting an assessing authority to adjust the amounts paid by him towards the liability for a subsequent assessment year. In that view of the matter, even the request of the appellant for a direction to the respondents to adjust the tax paid by him for the assessment years 1999-2000, 2000-2001 and 2001-2002 towards the tax due for the assessment year 2002-2003 also cannot be granted.

18. In view of the above, in our view, the learned Single Judge was only justified in not granting any of the reliefs sought for in the writ petition. Therefore, we do not see any error in the order passed by the learned Single Judge which calls for our interference. Accordingly, the appeal requires to be rejected and it is rejected.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-